

To: Clerk of the MT Supreme Court

**FILED**

12/08/2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: AF 09-0688

I am writing to **oppose** the proposed change to the Rule of Professional Conduct known as rule 8.4 for Montana Attorneys.

Everyone should have the right to feel the way they do and not worry about saying something that will cost them their way of living.

Darcy Kirkhorn – 850 3<sup>rd</sup> Rd NE, Fairfield, MT 59436 406-467-3699

*Darcy Kirkhorn*

**ORIGINAL****FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**ORIGINAL**

Dec 7, 2016

**FILED**

DEC 08 2016

Clerk of the Court

Re: Professional Rules of Conduct, Rule 8.4(g)

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Honorable Members of the Court,

You have called for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. As a concerned citizen, I hereby submit my request that you reject this rule for the following reasons.

Under our Constitution we have freedom of speech, along with freedom of religion; Your attempt to muzzle these rights in a sub-group of citizens, ie: attorneys (which you have powers of regulation and supervision over by law) makes your actions over-reach of the worst type. This makes your "rule change" a violation of the rights of these citizens and further, it places those efforts as "under color of authority" within the our base of laws.

This is a bad idea run amuck. Drop it now, before any further attention is drawn to your warped ideas. This will be remembered when your term comes around for renewal via the ballot box!

Signed,



Mel Frost  
Whitehall, MT

Sent via FAX on the date above – before the deadline.  
To: 406-444-5705

# ORIGINAL

Anderson, Diane

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**From:** James King <jw.king2006@gmail.com>  
**Sent:** Thursday, December 8, 2016 2:51 PM  
**To:** Court, SCclerk  
**Subject:** Rule Change (MRPC 8.4)

I disagree with the proposed change to Rule 8.4 of the Montana Rules of Professional Conduct.

"...engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law."

Generally speaking, the Law, and to a certain extent, socially accepted ethics, tend to be fairly cut and dry. This rule change (8.4), however, enters the world of whimsical subjectivity - and dangerously so - among those who are gateways to the interpretation of the law, so much so, that it not only affects an individual's ability to retain counsel, but also impacts the type and manner of representation an attorney may provide, as a new, and rather ambiguous liability, hangs over the heads of those in the legal profession, and those who seek their advice.

Because the proposed change incorporates terms, the social definitions for which are constantly in flux, this rule change will have a chilling effect on the ability for individual citizens or firms to seek and/or provide legal counsel. Until such definitions are solidly established and documented, this change, as proposed, is precarious, dangerous, and infirm.

Please elect to formally deny the addition of this proposed rule change.

Sincerely,

James King  
Gallatin County  
Montana

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

**Anderson, Diane**

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**From:** Ralph <ralph@clcwhitefish.org>  
**Sent:** Thursday, December 8, 2016 2:44 PM  
**To:** Court, SCclerk  
**Subject:** Re: Case #AF 09-0688 public comment

Clerk of Montana Supreme Court  
PO Box 203003  
Helena, MT 59620-3003

Re: Professional Rules of Conduct- Rule 8.4

Honorable Members of the Court,

12/8/16

I am writing in regard to case #AF 09-0688. You have called for public comment on the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. As a citizen of Montana I request that you decline the adoption of this rule.

It is a threat to Free Speech---By the adoption of this rule Montana Lawyers will find their speech severely limited, even in some social settings. This limitation on free speech is a dangerous precedent. I am not an attorney, but this should concern all people of all positions and political persuasions. A threat to the freedom of speech for one group of people is a threat to the freedom of speech for all. Most importantly, from my perspective, this rule does not allow for sincerely held religious beliefs.

It is a threat to Religious Freedom---Montana lawyers may find themselves under the threat of discipline by associating themselves with religious organizations that hold certain behaviors to be contrary to their religious beliefs. This could not only limit what religious organizations an attorney might attend, but also their ability to offer legal counsel to such groups. The lack of access to such legal advice may create a serious threat to religious freedom in Montana.

For these reasons, I urge the court not to adopt the proposed change to Rule 8.4 of the Professional Rules of Conduct.

Sincerely,

Ralph Boyer  
Associate Pastor Christ Lutheran Church  
Whitefish, Montana

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

Anderson, Diane

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**From:** Teresa Mccoy <everlastingfather97@yahoo.com>  
**Sent:** Thursday, December 8, 2016 2:03 PM  
**To:** Court, SCclerk  
**Subject:** Rule 8.4

Dear Madam or Sir;

I am writing to express my objection to Rule Change 8.4. Rule 8.4, I believe, has the potential to become a threat to the religious freedoms of many Montana lawyers--rights that you have a sworn duty to protect. I ask, with all due respect, that you reject this motion.

Sincerely,

Teresa Abigail McCoy, age 19  
UCC1-207 All Rights Reserved

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

Anderson, Diane

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**From:** Sandra Graham <sandygraham@live.com>  
**Sent:** Thursday, December 8, 2016 1:06 PM  
**To:** Court, SCclerk  
**Subject:** PLEASE REJECT RULE 8.4g

Re: Professional Rules of Conduct, Rule 8.4(g)

Honorable Members of the Court,

You are calling for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. I am a concerned citizen and business owner in the state of Montana. I humbly and adamantly requesting that you reject this rule for the following reasons.

This rule is an incredible over reach of government into my religious freedom, my freedom of speech and a direct assault on our constitutional way of life in the United States. Please reject this proposed rule immediately.

Respectfully,

Sandy Graham

Broker with Century 21 Hometown Brokers

Owner of Wildfire Hotshowers Emergency Support

Co-owner of Sq One Cabinets, Laurel, MT

406-861-9359 cell

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

**Anderson, Diane**

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**From:** Kim Colby <kcolby@clsnet.org>  
**Sent:** Thursday, December 8, 2016 12:21 PM  
**To:** Court, SCclerk  
**Subject:** Comments on Proposed Rule 8.4(g)  
**Attachments:** Comment Letter of the Christian Legal Society on Proposed Rule 8.4(g).pdf; Appendix 3 Professor Rotunda.pdf

Dear Mr. Smith:

Please provide the attached letter to Chief Justice McGrath and the associate justices of the Montana Supreme Court, as well as any other official who should see a copy. The letter contains the comments of the Christian Legal Society on the proposal to adopt Model Rule 8.4(g).

If there is anything further that I should do, please let me know by reply email or by calling me at (703) 894-1087. Thank you for your assistance in this matter.

Best,  
Kim Colby  
Director, Center for Law & Religious Freedom  
Christian Legal Society  
(703) 894-1087  
[kcolby@clsnet.org](mailto:kcolby@clsnet.org)

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

**ORIGINAL**

**Anderson, Diane**

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**From:** Elaine Moore <MontanaElaine@hotmail.com>  
**Sent:** Thursday, December 8, 2016 11:46 AM  
**To:** Court, SCclerk  
**Subject:** Re: REJECTION of Professional Rules of Conduct, Rule 8.4(g)

Honorable Members of the Court,

I am responding to your call for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. I am a concerned citizen submitting my request that you reject this rule.

I am 73 years old and, over the years, have watched with increasing dread and dismay as government has slowly and systematically stripped us of our freedoms, including speech and religion.

Rule 8.4(g) is simply another case of government overreach and interference.

Respectfully,

Elaine Moore  
1239 Poly Drive  
Billings, MT 59102

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA



# ORIGINAL

# FILED

JOSHUA R. KOTTER (213496)  
AVantGarde Law, LLC  
2722 3rd Ave. North, Suite 400  
Billings, MT 59101  
Office: (406) 272-6302  
jrkotter@mountainstateattorneys.com

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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IN THE SUPREME COURT OF  
THE STATE OF MONTANA

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IN RE THE MONTANA SUPREME  
COURT'S NEW PROPOSED RULE  
OF PROFESSIONAL CONDUCT  
8.4(g)

**PUBLIC COMMENT IMPLORING  
THIS HONORABLE COURT TO  
REJECT PROPOSED RULE 8.4(g) AND  
FOR NON-INCLUSION OF THE SAME  
IN THE MONTANA STATE  
ATTORNEY RULES OF  
PROFESSIONAL CONDUCT**

There have been many eloquent and thorough rebuffs to proposed rule of professional conduct 8.4(g). I join with all such other public comments, objecting to and requesting that this Honorable Court reject rule 8.4(g). While I desire to detail all the same points here, my comments will remain succinct and to the point.

It is well known and often cited that totalitarian and dictatorial governments, upon rising to power, often—as their first act of power—kill all the attorneys. This sentiment and political strategy is probably best captured by William Shakespeare, in *Henry VI, Part 2, Act IV, Scene 2*, where the character, Dick, states “The first thing we do, let's kill all the lawyers”. Dick and another henchman, Smith, are members of the gang of Jack Cade, who is a pretender to the throne. While there is no corollary in proposed Rule 8.4(g) to actually physically “killing” lawyers—proposed rule 8.4(g) most definitely seeks to and would have the effect of killing lawyers’ abilities to zealously represent certain types of clients, their interests (especially if they are political, philosophical, or religious interests), and to scare Montana attorneys from diligently

playing their necessary and intentional role of watchmen on the tower, to ensure that government remains lawful and constrained to the limits of power granted to it by the people.

Most disconcerting about proposed rule 8.4(g)—is the fact that its sweeping, broad, and general language, coupled with the reality that political winds and landscapes change from year to year and decade to decade—foreseeably culminate in the result that various and different political factions, at different times, will use proposed rule 8.4(g) to support, enforce, and scare attorneys away from fighting against different governmental wrongs, on opposite ends of the political and philosophical spectrum, based on the landscape of power and influence at a given point in time. As such, rule 8.4(g) only, in practical terms—seeks to engender and empower the worst in and from government—inviting abuse of governmental power, from whoever is in power at a given point in time.

Proposed rule 8.4(g) is horribly ill conceived and should be rejected by this Honorable Court.

**I. PROPOSED RULE 8.4(g) VIOLATES MONTANA STATE CONSTITUTIONAL RIGHTS CODIFIED IN ARTICLE II, PART II, SECTION 5, OF THE MONTANA STATE CONSTITUTION**

Article II, Part II, Section 5 of the *Montana State Constitution*, guarantees every Montanans' right to freely exercise their religion. It is entirely foreseeable—and actually entirely probable—that Montana State attorneys will (and do), from time to time, encounter situations, related to the practice of law, which touch upon, affect, and implicate the attorney's personal religious beliefs and practice. Proposed rule 8.4(g) seeks to make it illegal for an attorney to act according to their conscience in such circumstances, where doing so is otherwise lawful.

Attorneys are not a sub-class of the citizenry who, by virtue of their being attorneys, have lost or waived their own constitutional rights, or other rights under the laws of this state.

**II. PROPOSED RULE 8.4(g) VIOLATES MONTANA STATE CONSTITUTIONAL RIGHTS CODIFIED IN ARTICLE II, PART II, SECTION 7, OF THE MONTANA STATE CONSTITUTION**

Article II, Part II, Section 7 of the *Montana State Constitution*, guarantees every Montanans' rights for the government to not "impair [their] freedom of speech or expression", and to have the right that "Every person shall be free to speak or publish whatever he will on any subject". Proposed rule 8.4(g) directly seeks to infringe upon and cut off this constitutional right, for Montana State attorneys.

Attorneys are not a sub-class of the citizenry who, by virtue of their being attorneys, have lost or waived their own constitutional rights, or other rights under the laws of this state.

**III. PROPOSED RULE 8.4(g) VIOLATES MONTANA STATE CONSTITUTIONAL RIGHTS CODIFIED IN ARTICLE II, PART II, SECTION 3, OF THE MONTANA STATE CONSTITUTION**

Article II, Part II, Section 3 of the *Montana State Constitution*, guarantees every Montanans' rights to "acquiring, possessing and protecting property". Through its language regarding "socioeconomic status," presumably proposed rule 8.4(g) seeks to impair or entirely disallow attorneys from expecting to be paid for their professional time and work and, more disconcertingly, from being able to determine whether or not to originally take on a client, or release a client, based on their ability to pay for legal services.

Professional attorney services are always undertaken by contract, and under contract law. It is well settled and thoroughly preached by bar associations across the nation, that attorneys, fulfilling their due diligence and professionalism—enter into the attorney-client relationship through written contracts and agreements, and that failing to do so places the attorney in significant danger (i.e., state supreme courts and state bar associations, across the nation, unanimously preach contract law, and the due diligence thereof, relative to professional attorney

services).

MCA § 28-2-102 declares that the essential elements of a contract are “(1) identifiable parties capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration.” This fits perfectly with legal attorney services and the attorney-client relationship. When an attorney is retained, the parties are identified, each must consent to the attorney being hired to represent the client, such representation (as evidenced by our nation’s 240 year history) is a lawful object (given every person’s state and federal Constitutional Rights to legal counsel), and the consideration is apparent (legal services for payment for said services).

Under Montana State law, all persons are free to contract for any things that are not legally prohibited. Contracting for professional legal services is not prohibited. And, under the various laws of Montana State—Montana attorneys have every right to contract as they see fit, and to protect their property, namely their professional time!

The Montana Supreme Court has held, and it is still good law, that Montanans, and bodies and agencies operating in Montana State, have the right **NOT** to contract with whomever they desire, and that all such persons or entities are free to choose not to do so, as they see fit. Wibaux Educ. Ass’n v. Wibaux County High Sch., 175 Mont. 331, 333 (Mont. 1978). This proposition is also inherent within MCA § 28-2-102(2), which requires a party’s consent to contract. Of course, a party or entity can contractually agree and bind themselves to not have this right after initially contracting; however, this general right remains and is effective.

Attorneys are not a sub-class of the citizenry who, by virtue of their being attorneys, have lost or waived their own constitutional rights, or other rights under the laws of this state.

#### **IV. PROPOSED RULE 8.4(g) IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD**

The proposed rule does not clearly define the words and phrases: “harassment”,

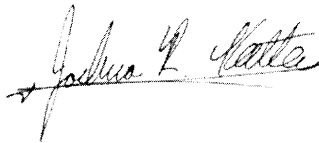
“discrimination”, “socioeconomic status”, and “conduct related to the practice of law”. The rule offers no clarification and would grant the enforcing persons, agencies, and powers total discretion regarding how to interpret and/or apply such things, which would lead to subjective and differing application, based on the political landscape at a given point in time. Furthermore, these are key operative words and phrases within the proposed rule; however a person of reasonable intelligence cannot ascertain what is or is not legal, given these overly vague words and phrases.

Even if the vagueness of the proposed rule were not a problem, the proposed rule seeks to overreach in violation of constitutionally protected conduct (see above). As such, the proposed rule is unconstitutionally overbroad.

**V. THE MONTANA SUPREME COURT SHOULD REJECT PROPOSED RULE 8.4(g)**

For all the foregoing reasons, and many others not cited here—the Montana Supreme Court should reject proposed rule 8.4(g).

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of December, 2016.

A handwritten signature in cursive script, reading "Joshua R. Kotter", written in dark ink.

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Joshua R. Kotter

RE: PROFESSIONAL CONDUCT. KNOWN AS RULES,  
MARRIAGE BETWEEN ONE MAN + (2)  
ONE WOMAN

ORIGINAL

Dear Sir

PLEASE

I am totally  
against same sex marriage.  
why would you want to  
put out children and young  
adults in such a terrible  
situation. Please - don't  
do this. There is a  
God - maybe you don't  
know this, but He did  
destroy Sodom & Gomorrah  
and I don't want you  
to do this. There's too much  
young people out there that  
are going to get hurt.

Please please - don't set  
our children in such a  
terrible-terrible world -

Sincerely

Shirley Edmunds

P.O. Box 764

Monte NT.

59538

FILED

DEC 08 2016

Ed Smith

CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORIGINAL

12-8-16

DEAR SIR,

I DON'T UNDERSTAND  
WHY ANYONE WOULD TAKE  
THE SIDE OF A DAMN QUEER.

A GOOD EXAMPLE OF HOW  
I FEEL STARTED WHEN I WAS  
ABOUT FIVE YEARS OLD. I WAS  
SODOMISED (THATS ~~THE~~ ~~THE~~ ~~THE~~)  
BY A 25 OR SO YEAR OLD QUEER.  
OUT OF SHAME I NEVER TOLD  
MY DAD OR OLDER BROTHERS AND  
TO THIS DAY I REGRET THAT, AS  
THEY WOULD OF HUNG THAT S.O.B.  
I PRAY TO GOD TRUMP WILL PASS  
A BILL CALLING FOR THEIR REMOVAL  
EITHER BY ROPE OR TAIL.

LOVE LOVE  
*George E. Ehlert*

P.S. AND POLITICIAN BOX 764  
DREAMING WIP MALTA, MT.  
59538  
SHIT LIKE THIS  
SHOULD BE DRUMMED  
OUT OF OFFICE?!

FILED

DEC 08 2016

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

Anderson, Diane

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**From:** Deborah DePietro <deborah@depietrolaw.com>  
**Sent:** Thursday, December 8, 2016 4:05 PM  
**To:** Court, SCclerk  
**Subject:** Proposed Rule Change

Honorable Members of the Court,

You have called for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. As an Attorney and business owner (Law Practice), I request you to reject this rule. I do not see a problem in the Montana Bar that needs to be addressed by this rule change. It will create more problems and it adversely affects the morale of the Bar to be micromanaged by such a rule. Autonomy is one of the best properties of self-employment. Infringing on a lawyers ability to accept or reject cases for any reason seriously impinges on the enjoyment of practicing law. Thank you.

Deborah DePietro  
Attorney at Law  
2722 3rd Ave. N., Ste. 400  
Billings, MT 59101  
(406) 850-5808  
[Deborah@DePietrolaw.com](mailto:Deborah@DePietrolaw.com)

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**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA



# ORIGINAL

Anderson, Diane

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**From:** Beverly <beve81@roadrunner.com>  
**Sent:** Thursday, December 8, 2016 3:57 PM  
**To:** Court, SCclerk  
**Subject:** Rule 8.4

Montana Supreme Court is considering changing rule 8.4 of the rules of conduct .

PLEASE do not change Montana Supreme Court rule 8.4 of the rules of conduct! This will have long lasting and serious consequences that will be bad for the entire country!!!

Stick with the U S Constitution!!!

Beverly Pastizzo

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

# ORIGINAL

Renk, Rex

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**From:** Coreen Glen <mtmojo636@gmail.com>  
**Sent:** Thursday, December 8, 2016 4:27 PM  
**To:** Court, SCclerk  
**Subject:** Rule 8.4(g) Professional rules of Conduct

Honorable Members of the Court,  
You have called for public comment of the proposed new Rule 8.4(g) of the Professional Rules of Conduct for Montana Attorneys. As a concerned citizen, I hereby submit my request that you reject this rule for the following reasons: Religious freedom, government overreach, freedom of speech

Respectfully,  
Coreen Glen  
343 Glenhaven Drive  
Billings, MT 59105  
(406) 248-6535

**FILED**

DEC 08 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA